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Notary Responsibilities and Legal Protection of Legal Owners of Land Certificates Transferred Illegally (Case Study of Land Ownership Certificate No. 3747/Pondok Pinang, South Jakarta)

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Abstract: The land dispute case experienced by Ir. Sugandi over Certificate of Ownership (SHM) No. 3747/Pondok Pinang, South Jakarta, demonstrates the abuse of authority by notaries and the weakness of land administration oversight. The land certificate belonging to Ir. Sugandi was unlawfully transferred through the involvement of several notaries, resulting in the issuance of a preliminary sale and purchase agreement, a forged deed of sale and purchase, and ultimately a new certificate under the name of a third party. Furthermore, the certificate was encumbered with a mortgage at a banking institution without applying the prudential principle. This study aims to analyze the validity of land transfers carried out through defective deeds, examine the legal responsibility of the notaries involved, assess the juridical implications of the issuance of the new certificate by the National Land Agency, and evaluate the application of the prudential principle by financial institutions in accepting land rights as collateral. In addition, this study formulates legal protection measures that can be provided to the rightful owner to defend his rights. The results of this study are expected to provide theoretical contributions to the development of civil law and land law, as well as practical implications to strengthen the supervision of notarial practice, land institutions, and banking institutions in order to ensure legal certainty and the protection of land ownership rights in Indonesia.

Keywords: Land dispute, Certificate of Ownership, Unlawful act, Notary responsibility, Legal protection

INTRODUCTION

Land in Indonesia occupies a unique position in both the social and economic spheres. It serves not only as a means of livelihood and residence but also as an asset with significant financial value. Consequently, disputes over land ownership are frequent and often complex, particularly in relation to the *transfer of rights (peralihan hak atas tanah)*. Although the *Basic Agrarian Law (Undang-Undang Pokok Agraria/UUPA)*—Law No. 5 of 1960—was designed to guarantee legal certainty and protect ownership rights, in practice, weaknesses in administrative control, document verification, and professional accountability have created loopholes for abuse and fraud.

The case of *Certificate of Ownership (Sertifikat Hak Milik/SHM) No. 3747/Pondok Pinang, South Jakarta*, belonging to Ir. Sugandi, exemplifies this systemic issue. The property, measuring 310 m², was unlawfully transferred through a chain of falsified documents involving several *notaries (notaris)* and *Land Deed Officials (Pejabat Pembuat Akta Tanah/PPAT)*. A forged *Deed of Sale and Purchase (Akta Jual Beli/AJB)* was created without the owner's knowledge or consent, resulting in the unlawful issuance of a new certificate under the name of a third party, Andre Widjaya. Subsequently, the fraudulent certificate was used as collateral by *Standard Chartered Bank*, thereby compounding the violation of the rightful owner's civil rights.

This study is intended to provide a juridical analysis of the unlawful transfer process by addressing four core legal issues:

1. The legal construction and validity of unlawful acts in the transfer of land rights;
2. The extent of liability borne by the notaries, *PPAT*, and financial institutions involved;
3. The legal implications of the issuance of a new certificate by *BPN*; and
4. The legal remedies available to restore the rights of the legitimate owner.

The research is significant for two reasons. First, it offers a *remedial framework* for individuals who suffer loss due to unlawful land transfers. Second, it contributes to the *development of private law doctrine* by clarifying the intersection between civil liability, professional ethics, and property protection in the Indonesian legal context.

Previous studies have explored similar issues but often from isolated perspectives. *Maria S.W. Sumardjono* (2008) highlighted that weak institutional capacity and lack of transparency in land registration undermine the principle of legal certainty. *Boedi Harsono* (2005) emphasised the disparity between the normative ideals of the *UUPA* and its practical enforcement, which frequently leaves rightful owners vulnerable. However, limited attention has been given to the collaborative dimension of fraud—how misconduct by notaries, *PPAT*, and financial institutions collectively facilitates unlawful transfers.

The novelty of this research lies in its *integrative legal analysis* that synthesises civil, administrative, and criminal perspectives under a private law framework. It argues that systemic weaknesses—particularly in verification, oversight, and professional diligence—constitute the root causes of unlawful transfers. Hence, reinforcing accountability among notaries and improving institutional governance are essential to ensuring the legal protection of ownership rights.

METHOD

This study employs a *normative juridical research method*, which focuses on examining laws, legal principles, and doctrines that govern the transfer of land rights and the liability of notaries within Indonesia's civil law system. The approach aims to interpret and analyse existing legal norms in order to establish a coherent understanding of the legal issues arising from unlawful land transfers.

1. Research Approach

The *normative juridical* approach is adopted because the problem under investigation—namely the unlawful transfer of ownership—arises from the misapplication and abuse of legal instruments rather than from empirical factors. As explained by Soerjono Soekanto, normative legal research is primarily concerned with identifying the law *in concreto* and assessing whether it has been applied correctly in a given case.[1] This approach allows for a systematic interpretation of legal norms that have been violated, particularly those governing property ownership, notarial conduct, and registration procedures.

2. Sources of Law

The research utilises three main categories of legal sources:

a. **Primary Legal Sources**, consisting of statutes and regulations directly related to the subject matter, including:
   1. *Basic Agrarian Law (Undang-Undang Pokok Agraria/UUPA)* – Law No. 5 of 1960;
   2. *Law on Notary Office (Undang-Undang Jabatan Notaris/UUJN)* – Law No. 2 of 2014 in conjunction with Law No. 30 of 2004;
   3. *Government Regulation No. 24 of 1997 on Land Registration*; and
   4. *Law No. 10 of 1998 on Banking*.

b. **Secondary Legal Sources**, which include books, academic commentaries, journal articles, and previous research concerning notarial liability and land ownership protection. Notable among these are *Boedi Harsono (2005)*, *Maria S.W. Sumardjono (2008)*, and *Erna Sri Wibawanti (2015)*, whose works explore the complexities of land law enforcement in Indonesia.

c. **Tertiary Legal Sources**, such as legal dictionaries, encyclopaedias, and official publications, are used to clarify terminology and provide consistency in the interpretation of legal concepts.

3. Analytical Framework

This study applies a combination of *statutory interpretation*, *doctrinal analysis*, and *case study review*. The *statutory interpretation* method is employed to examine how relevant legal provisions are applied in practice, especially those related to ownership transfer and the notarial process. *Doctrinal analysis* allows for the evaluation of scholarly perspectives and legal reasoning developed through academic discourse, providing a theoretical foundation for interpreting civil liability and the principle of legal certainty. Finally, *case study analysis* is used to review judicial decisions that address similar cases of fraudulent land transfers, thereby identifying patterns of legal interpretation within the Indonesian judiciary.

4. Data Validation

In order to ensure the validity of findings, the study integrates *comparative legal analysis* and *logical consistency testing*. Comparative analysis is used to contrast Indonesian legal principles with international practices in notarial and land registration systems, highlighting the unique challenges within the Indonesian framework. Logical consistency testing, on the other hand, ensures that the analysis adheres to the internal coherence of civil law principles, especially those concerning ownership, liability, and restitution.

Through this methodology, the study constructs a comprehensive legal framework that not only elucidates the responsibilities of notaries and related institutions but also offers a doctrinal basis for reforming legal practices and ensuring stronger protection of ownership rights under Indonesia's private law system.

RESULTS AND DISCUSSION

1. Validity of the Unlawful Land Transfer

The transfer of *Certificate of Ownership (Sertifikat Hak Milik/SHM) No. 3747/Pondok Pinang* was legally defective from its inception. The transaction was based on falsified documents and was executed without the consent or knowledge of the rightful owner, Ir. Sugandi. Such actions clearly contravene the essential requirements of a valid contract as stipulated under *Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum*

Perdata/KUHPerdata), which requires lawful consent, legal cause, and competence of parties for the formation of binding agreements.

The creation of a forged *Deed of Sale and Purchase (Akta Jual Beli/AJB)* constitutes a violation of both civil and criminal law. Under civil law, the deed is *void ab initio*—invalid from the outset—because it was made without the intention or participation of the legal owner. In the criminal context, the act of falsification falls under *Articles 263 and 264 of the Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana/KUHP)* concerning document forgery. The unlawful issuance of the deed has thus produced no legal effect in transferring ownership to a third party.

2. Notary's Legal Responsibility

Notaries (*notaris*) and *Land Deed Officials (Pejabat Pembuat Akta Tanah/PPAT)* play a central role in ensuring the legality of property transactions. Their duties are regulated by the *Law on Notary Office (Undang-Undang Jabatan Notaris/UUJN)* and related implementing regulations. The involvement of multiple notaries in the unlawful transfer of Ir. Sugandi's land indicates a serious breach of professional obligations and ethical standards.

In the present case, Notary Agung Setiawan Badarudin, S.H., received the original certificate from the owner's son, Radian Sugandi, for a different administrative purpose but later transferred it unlawfully to other notaries. Subsequently, Notary Noor Kholis Adam, S.H., M.H., created a forged *AJB* and processed the reissuance of the land certificate under a new name. This conduct violates *Article 16 paragraph (1)* of the UUJN, which requires notaries to act independently, honestly, and in accordance with the law.

The liability of the notaries can be categorised as follows:

a. **Civil liability**, for damages caused by their unlawful acts, under *Article 1365 of the Civil Code* (tortious liability);
b. **Criminal liability**, for their participation in document forgery and abuse of authority; and
c. **Administrative liability**, in the form of disciplinary sanctions, suspension, or revocation of notarial licence by the supervisory board (*Majelis Pengawas Notaris*).

The notaries' collective misconduct demonstrates that ethical breaches in the notarial profession can have severe repercussions on property rights and public confidence in legal institutions.

3. Implications of the New Certificate Issuance

The *National Land Agency (Badan Pertanahan Nasional/BPN)* is mandated under *Article 19 of the Basic Agrarian Law (UUPA)* and *Government Regulation No. 24 of 1997* to guarantee legal certainty through accurate land registration. The issuance of a new certificate based on falsified documents undermines this principle.

In Ir. Sugandi's case, the BPN's failure to verify the authenticity of the underlying deed before issuing a new certificate demonstrates institutional negligence. The wrongful registration has produced *dual ownership claims*—a situation in which the physical possession remains with the rightful owner while the administrative record shows another party. This not only erodes public trust in land registration but also complicates legal remedies for victims of fraud.

From an administrative law perspective, the unlawful issuance of the certificate can be challenged through an *administrative appeal* or *judicial review* before the State Administrative Court (*Pengadilan Tata Usaha Negara/PTUN*), as recognised in *Law No. 5 of 1986 on Administrative Justice*.

4. Prudential Principles of Banking Institutions

Financial institutions are expected to apply the *principle of prudence (prinsip kehati-hatian)* as mandated by *Article 2 of the Banking Law (Law No. 10 of 1998)*. The acceptance of Ir. Sugandi's unlawfully transferred certificate by *Standard Chartered Bank* as loan collateral illustrates a failure of due diligence.

Banks are required to conduct comprehensive verification of ownership documents before accepting property as security. In this case, the bank neglected to verify the authenticity of the certificate and the identity of the true owner, leading to a breach of fiduciary duty and exposure to legal and reputational risk. The bank may thus be held jointly liable for damages under the doctrine of *negligent participation* in an unlawful transaction.

This situation also underscores the need for stricter collaboration between *BPN* and financial institutions through an integrated verification system, possibly supported by electronic land registration, to prevent future frauds of similar nature.

5. Legal Protection for the Rightful Owner

As the rightful holder of *SHM No. 3747*, Ir. Sugandi retains ownership rights to the property notwithstanding the fraudulent administrative transfer. His rights can be protected and restored through several legal avenues:

1. **Civil remedies** — including filing a lawsuit to annul the fraudulent *AJB* and the new certificate, and to claim compensation for losses under *Article 1365 of the Civil Code*;
2. **Administrative remedies** — such as petitioning the *BPN* to revoke the unlawfully issued certificate and correct the registration record; and
3. **Criminal remedies** — by reporting the perpetrators for document forgery and fraud, pursuant to *Articles 263–266 of the Penal Code (KUHP)*.

These combined mechanisms provide comprehensive protection under Indonesian law, reaffirming the supremacy of the rightful owner's civil rights. The case of Ir. Sugandi therefore serves as a legal precedent underscoring the necessity of rigorous verification and accountability in land transfer procedures.

CONCLUSION

This study concludes that the unlawful transfer of ownership over *Certificate of Ownership (Sertifikat Hak Milik/SHM) No. 3747/Pondok Pinang* reflects not merely isolated misconduct but a systemic weakness within Indonesia's land administration, notarial supervision, and institutional oversight. The creation and registration of forged deeds, compounded by the negligence of financial institutions, demonstrate that the fundamental principle of legal certainty—enshrined in the *Basic Agrarian Law (UUPA)*—has not been effectively upheld in practice.

The findings highlight that notaries bear significant professional and ethical responsibilities in ensuring the authenticity and legality of deeds. Any deviation from these obligations constitutes a breach of both civil and criminal law, as well as a violation of administrative ethics under the *Law on Notary Office (UUJN)*. Likewise, the *National Land Agency (BPN)* must reinforce its verification mechanisms in certificate issuance to prevent dual ownership and fraudulent registration.

Financial institutions, as stakeholders in land-related transactions, are equally obliged to implement *prudential banking principles* by verifying ownership and the legality of collateral assets. Their failure to exercise due diligence may result in shared liability for losses arising from unlawful transactions.

From a broader perspective, the case underscores the need for an integrated and transparent legal framework that links notarial records, land administration, and banking systems. Such integration, possibly through the adoption of an electronic registration and verification system, would enhance the traceability of land ownership, minimise opportunities for document falsification, and strengthen the rule of law in Indonesia's private property sector.

Ultimately, this research contributes both theoretically and practically: theoretically, by advancing the understanding of civil liability and notarial ethics within the Indonesian legal system; and practically, by proposing reforms to ensure legal certainty and to safeguard the rights of lawful landowners from future fraudulent practices.

REFERENCES

Harsono, Boedi. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya.* Jakarta: Djambatan, 2008.

Soekanto, Soerjono. *Pengantar Penelitian Hukum.* Jakarta: UI Press, 2012.

Sumardjono, Maria S.W. *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya.* Jakarta: Kompas, 2008.

Wibawanti, Erna Sri. *Hukum Agraria Indonesia dalam Perspektif Praktik.* Yogyakarta: LaksBang Pressindo, 2015.

Ibrahim, Johnny. *Teori dan Metodologi Penelitian Hukum Normatif.* Malang: Bayumedia, 2006.

Nurjaya, I. G. A. (2019). "Revisiting the Legal Certainty in Indonesia's Agrarian Law: Challenges and Reform Directions." *Journal of Indonesian Legal Studies*, 4(1), 23–40.

Setiawan, D. & Rahardjo, T. (2020). "Professional Liability of Notaries in Fraudulent Land Transactions." *Yustisia Law Review*, 9(3), 255–272.

Sari, N. A. (2021). "Strengthening the Supervisory Function of Land Registration Offices to Prevent Ownership Disputes." *Indonesian Journal of Law and Policy Studies*, 6(2), 115–129.

United Nations Human Settlements Programme (UN-Habitat). (2018). *Land Governance Assessment Framework: Indonesia Country Report.* Nairobi: UN-Habitat.

World Bank. (2020). *Improving Land Administration in Indonesia: Strengthening Transparency and Legal Certainty.* Washington, D.C.: World Bank Publications.

USAID. (2019). *Indonesia Land and Property Rights Study.* Jakarta: USAID Indonesia.

Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata).

Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA).

Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 concerning the Notary Office (UUJN).

Government Regulation No. 24 of 1997 on Land Registration.

Law No. 10 of 1998 concerning Banking.

Law No. 5 of 1986 on State Administrative Court (PTUN).

Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana/KUHP), Articles 263–266.

Supreme Court Decision No. 206 PK/Pdt/2015 (Fraudulent Land Transfer Case).